

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

THOMAS S. MCCLOSKEY and	)	S
KEVIN P. MCCLOSKEY,	)	
Plaintiffs	)	
	)	
v.	)	
	)	1:04-CV-11015-RCL
ROBERT S. MUELLER, III, Director of	)	
the Federal Bureau of Investigation;	)	
Investigation; THE FEDERAL BUREAU	)	
OF INVESTIGATION; WILLIAM H.	)	
ANDERSON, as an employee of the	)	
Federal Bureau of Investigation;	)	
THE UNITED STATES OF AMERICA;	)	
and GARY LEE SAMPSON,	)	
Defendants.	)	

**FEDERAL DEFENDANTS' MOTION TO FILE A REPLY TO  
PLAINTIFF'S RESPONSE AND OPPOSITION TO MOTION TO DISMISS**

Defendants, Robert S. Mueller, III, in his official capacity as Director of the Federal Bureau of Investigation (“the FBI”), William H. Anderson in his official position as an FBI employee at the time in question, the FBI, and the United States of America (the “Federal Defendants”), through their attorney, David V. Kirby, Acting United States Attorney for the District of Vermont, hereby request leave of the court to reply to Plaintiffs’ Response and Opposition to Motion to Dismiss of the Federal Defendants. The Federal Defendants seek to reply for several reasons: First, to respond to Plaintiffs’ argument that discovery is required before dismissal on jurisdictional grounds; Second, to clarify the nature of the discretionary function exemption defense; and Third, to address several cases cited by Plaintiffs in support of their arguments. The Reply Memorandum is eleven pages, including signature block and certificate of service. The Federal Defendants’ Reply Memorandum accompanies this motion.

The undersigned counsel attempted to contact Plaintiffs’ counsel on November 22, 2004 to

obtain consent to file this Motion; however, Attorney Reddington was not available and a message was left seeking consent.

Wherefore, the Federal Defendants respectfully request that the Court grant its Motion to File a Reply to Plaintiffs' Response and Opposition.

Dated at Burlington, in the District of Vermont, this 22<sup>nd</sup> day of November, 2004.

Respectfully submitted,

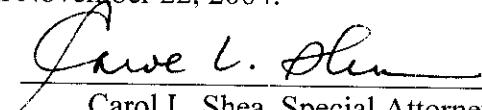
UNITED STATES OF AMERICA,  
ROBERT S. MUELLER, III, THE FEDERAL  
BUREAU OF INVESTIGATION, and  
WILLIAM ANDERSON in his official capacity,

DAVID V. KIRBY  
Acting United States Attorney

By:   
CAROL L. SHEA  
Special Attorney  
Chief, Civil Division  
United States Attorney's Office  
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#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the *pro se* parties and the attorney of record for Plaintiffs by regular mail on November 22, 2004.

  
Carol L. Shea, Special Attorney